

## FORWARD

This booklet is prepared to furnish procurement guidance to all activities serviced by the Directorate of Contracting (DOC), Fort Bliss, TX. DOC is of the understanding that the better you, our customers, understand the procurement process, the easier it becomes for DOC to support your needs.

It is DOC's sincere desire to provide our customers with the best possible support. This brochure is published with this objective in mind. Any suggestions you may have to improve this support are solicited.

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## CONTENTS

PART 1 - GENERAL	PAGE NO.
1-1 Definitions.....	4
1-2 Acquisition Regulation.....	7
1-3 Deviations.....	7
1-4 Who Can Obligate the Government.....	7
1-5 Contracting Relationships.....	7
1-6 Unauthorized Purchases.....	8
1-7 Code of Conduct - Ethics.....	8
1-8 Prohibition Against Voluntary Services.....	9
1-9 Fraud, Waste and Abuse.....	9
1-10 On Post Product Demonstrations.....	9
1-11 Advocate of Competition.....	9
 PART 2 - THE DIRECTORATE OF CONTRACTING	
2-1 Organization.....	10
2-2 Functions.....	10
 PART 3 - POLICIES	
3-1 General.....	12
3-2 Two Basic Methods of Contracting.....	12
3-3 Required Contracting Lead Time.....	12
3-4 Urgent/Emergency Requirements.....	13
3-5 Standard Procurement System (SPS) .....	13
3-6 Solicitation of Bids/Prices for Planning or Information Purposes.....	13
3-7 Disclosure of Government Estimates.....	14
3-8 Contracts Between the Government and its Employees.....	14
3-9 Advance Contracting Planning Program.....	14
3-10 Modifications to Existing Contracts.....	14
3-11 Restriction Against Purchases of Foreign Made Items.....	15
3-12 Small Business Program.....	15
3-13 Justification and Approval (J&A) For Other Than Full and Open Competition.....	15
 PART 4 - PURCHASE REQUESTS	

4-1	When are Purchase Requests Required.....	28
4-2	Specifications and Descriptions.....	28
4-3	Delivery Time.....	30
4-4	Documentation Which Must Accompany Purchase Requests.....	30
4-5	Competition Advocate Program.....	31
4-6	Purchase of Automated Data Processing Equipment.....	31
4-7	Government Furnished Property.....	32

## PART 5 - CONTRACT ADMINISTRATION

5-1	Introduction.....	33
5-2	Post Award and Preconstruction Conference.....	33
5-3	Non-Personal Services Contract Administration.....	33
5-4	Construction Contract Administration.....	35
5-5	Recourse Against the Unsatisfactory Contractor.....	37
5-6	Termination of Contracts for the Convenience of the Government.....	38
5-7	Contract Changes.....	38
5-8	Receiving Reports.....	39
5-9	Prompt Payment Requirements.....	39

## PART 6 - CONTRACT REPAIR PROCEDURES

6-1	General.....	40
	Unauthorized Acts.....	40
	Emergency Walk through Request.....	41
6-4	Repairs Performed Under GSA Contract.....	41
6-5	Procedures for Accomplishing Repairs.....	41

## APPENDICES

### APPENDIX 1

Memorandum: Brand Name Request.....	43
-------------------------------------	----

### APPENDIX 2

Memorandum: Noncompetitive Acquisition Analysis.....	44
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### APPENDIX 3

Instructions on Purchase Request, DA 3953.....	45
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### ATTACHMENT 1

Unit of Issue Designations.....	47
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## PART 1

### GENERAL

#### 1-1. DEFINITIONS

- a. AGENT - Within the Federal Government, anyone who is empowered to act for the Government is a Government Agent. An Agent's authority is always limited. For example, a Government employee authorized to inspect and accept supplies or services for the Government is an agent; however, the individual's authority is limited solely to inspecting and accepting or completing a discrepancy report for supplies or services properly purchased by another agent who has the authority to purchase. The only agent authorized to obligate the Government to pay for supplies or services from a civilian source is a warranted Contracting Officer.
- b. FAR - Federal Acquisition Regulation. This regulation applies to all Federal Contracting and is based on Federal Acquisition laws passed by the Congress.
- c. ARMY FAR SUPPLEMENT - This supplement implements the FAR and establishes uniform policies and procedures for the Department of the Army.
- d. POST CONTRACTING DEFINED - Post contracting is a term used to describe the local purchase function through which commanders obtain supplies, equipment, services, and construction not otherwise furnished by army, general services administration, or Defense Supply Agency Depots.
- e. CHANGE ORDER - A unilateral (one signature) written order (modification) issued by a Contracting Officer directing a change to a contract. The authority to issue such a change must be based on a clause contained in the contract. Only a Contracting Officer has the authority to issue a change, neither employees nor representatives of the Contracting Officer have this authority.
- f. CONTRACT - A general term used to describe all types of agreements and orders which obligate two or more parties to a course of action that would be recognized as a legal obligation by a court of law. It is generally used in contracting when referring to a formal contract.
- g. CONTRACTING OFFICER - An individual appointed in writing by an authorized representative of the United States Government to enter into and administer contracts and make findings and determinations with respect thereto on behalf of the United States of America.
- h. EDI - Electrical Data Interface. The way to paperless contracting via the Internet.

- i. SEALED BIDDING – Public opening of bids, and awards for those procurements estimated to exceed \$100,000. It is a very rigid and precise means of soliciting competitive bids based on a firm requirement adequately described with detailed plans and/or specifications. Negotiations are not allowed. Release of information on a requirement prior to sealed bidding, providing one or more bidders with information that is not available to all bidders during sealed bidding, not only compromises the integrity of the competitive bidding system, but may result in punitive actions being taken against the releaser.
- j. FORMAL CONTRACT - A mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. Formal contracts are drafted for those procurements estimated to exceed \$100,000.00.
- k. IFB - INVITATION FOR BID - A widely publicized document issued to request bids on a sealed bid acquisition. All bidders compete on an equal basis. No additional information, other than that contained in the IFB, is provided to the bidders unless an amendment is issued. Any inquiries concerning an IFB must be referred to the Directorate of Contracting.
- l. INSPECTION - The examination (including testing) of supplies or services to determine whether they conform to contract requirements. Inspection should precede acceptance.
- m. NEGOTIATION - The making of purchases and contracts without sealed bidding. This in no way should be construed to mean without competition. Negotiation simply allows further discussion and revision of offers after receiving and opening of proposals.
- n. SIMPLIFIED ACQUISITION - A simplified contract of \$100,000 or less awarded under the simplified acquisition provisions of FAR Part 13. This is a unilateral document signed only by a Contracting Officer. No lawful contractual agreement is in effect under such an order until the vendor takes action to fill the order.
- o. PURCHASE REQUEST - DA Form 3953, Purchase Request and Commitment, comprises the initial request for any purchasing action. A purchase request, with a certification of funds availability, must be on hand before a Contracting Officer can initiate any buying action.
- p. QUALITY ASSURANCE EVALUATOR (QAE) - A technical expert from the Functional Area assigned on a particular contract to assist and advise the Contracting Officer concerning the technical aspects of the contract. Their primary function is to inspect the contractor's performance for compliance with the contract. They are not authorized to direct the contractor to take any action which would affect the terms, conditions, provisions, or price of a contract.

q. RFP - REQUEST FOR PROPOSAL - A multipage solicitation document issued to solicit offers for a negotiated acquisition over \$100,000. As with an IFB, all inquiries concerning an RFP must be referred to the Directorate of Contracting.

r. SERVICE - Acquisition in which the primary purpose is to contract for a person's time and skills. Any tangible product is incidental or of less cost than the labor. Engraving, laundry and dry cleaning, refuse collection, and custodial are all examples of services.

s. SIMPLIFIED ACQUISITIONS:

(1) In simplified acquisitions, special procedures are authorized to cut paperwork and red tape. The following are a few of the ways of handling simplified acquisition:

(a) Purchase orders (DD Form 1155) and (DD Form 1449)

(b) Delivery orders awarded against a basic contract. (The dollar amount of delivery orders is limited by the basic contract.)

(c) Charge accounts in the form of Blanket Purchase Agreements (BPAs).

(d) Blanket delivery orders against basic contracts, permitting oral scheduling of deliveries. (The dollar amount is limited by the basic contract.)

(e) Government Visa Credit Card.

(2) Competition is obtained both by oral and written means. Purchases of \$2,500 or less may be made without competition provided the purchases are rotated among qualified local merchants whose prices are considered fair and reasonable.

t. SUPPLEMENTAL AGREEMENT - Any contract modification, which is accomplished by mutual agreement of the contractor and the Contracting Officer (Bilateral Agreement)

u. SUPPLIES - Any purchases which are tangible end items, except real property.

v. TERMINATION - The act and procedure of canceling an active contract for either convenience of the Government or for contractor's default (breach of contract).

1-2. ACQUISITION REGULATION - The Federal Acquisition Regulation (FAR) was created to implement the Office of Federal Procurement Policy Act of 1977, as amended

by Public Law 96-83. The FAR, together with agency supplemental regulations, replaces the Defense Acquisition Regulation (DAR). As such, the FAR and amendments thereto carry the same force as Federal Law and require compliance by all individuals.

a. Amendments, supplements or other modifications of the FAR require FAR committee approval.

b. It should also be pointed out that although FAR is the principal directive, there are other statutes governing Federal contracts. Further, Executive Orders, Office of Management and Budget (OMB) circulars, and judicial decisions have a pronounced impact on the contracting process.

1-3. DEVIATIONS (FAR 1.400) - Contracting Officers are strictly prohibited from deviating from the requirements of contracting directives. If you must request a deviation, then furnish written facts upon which the Contracting Officer may request deviation authority from higher headquarters.

1-4. WHO CAN OBLIGATE THE GOVERNMENT - Only those persons duly appointed as Contracting Officers are authorized to issue contracts, or otherwise obligate the Government, for the purchase of supplies or services and to make changes to such contract. Individuals appointed to these positions are prohibited from ratifying the unauthorized acts of others.

1-5. CONTRACTING RELATIONSHIPS - The contracting activity does not establish quantities or types of supplies or services to be purchased. This is the responsibility of the requiring activity. The standards, quality specifications, or designs desired are established by others. The functional responsibilities of the buying organization are to buy the supplies or services, and determine the method of purchase.

a. Staff Judge Advocate (local). Advice and counsel regarding legal aspects of contracts. This is a valued advisory service.

b. Budget Analyst. Accounts for funds expended and insures they are charged to the proper organization. Provides certification of funds.

c. Requiring Agencies. These are the customers of the Directorate of Contracting. The requesting agency is responsible for providing specifications, and usually furnishes inspection services or obtains them from other post activities possessing such capability.

1-6. UNAUTHORIZED PURCHASES:

a. What is an unauthorized purchase? This is action taken by anyone, other than a designated Contracting Officer, which obligates the U.S. Government to pay for supplies or services received. Rank or position of an individual does not make a Contracting Officer. All Contracting Officers are required by Federal law to be designated in writing (on a document issued by the ACA in our case) and are required to produce this written evidence whenever their authority to obligate the U.S. Government is questioned.

b. An unauthorized purchase action can be paid only if it is an otherwise legal transaction, which is reviewed by a Contracting Officer and legal officer and ratified by the Director of Contracting, HQ ACA/OPARC, or HQ DA (depending on the dollar value). Besides affording the individual involved a great deal of adverse exposure, such actions waste many productive man-hours and delay payment of Government obligations. They may also result in disciplinary action being taken against the offending individual, which may include non-payment of the obligation by the Government, thus, becoming a personal liability. No transaction will be ratified that would not otherwise have been valid if made by a properly authorized Contracting Officer. Unauthorized acts include, but are not limited to:

(1) Providing advanced procurement information to a business firm; such action adversely affects the integrity of the contracting process. FAR provides that advanced plans to procure will not be released when such information would provide undue or unfair competitive advantage to commercial interests.

(2) Making changes to valid existing orders and contracts such as directing contractor personnel to change the conduct of their work while they are performing various services or construction contracts.

(3) Ordering of Supplies or Services. Implicit in this is the prohibition to purchase supplies or services with personal funds with the expectation of reimbursement of appropriated funds.

c. If you should become involved, directly or indirectly, in an unauthorized purchase action, you should immediately contact the Contracting Office to begin appropriate ratification action.

1-7. CODE OF CONDUCT - ETHICS: AR 600-50 ABD Far 3.100 provide detailed guidance on what is expected of all Army personnel. Acceptance of gifts or favors from contractor or contractor personnel may well result in criminal prosecution. Whenever a gratuity is delivered to you (i.e., left on your desk, front porch, or in your car, etc.) return it, if you can. If you cannot, turn it over to your supervisor. Play it safe and be safe! Whenever you are in doubt, call the Directorate of Contracting or consult the Staff Judge Advocate's office.

1-8. PROHIBITION AGAINST VOLUNTARY SERVICES.



While there are public spirited individuals and firms who would freely donate their services to assist the Government without reward or compensations, there are also individuals and firms who, in donating services, would do so with the expectation of reciprocity in the form of possible preferential treatment or advanced contracting knowledge. To preclude such situations from arising in the Government, legislation has been passed prohibiting officers and employees from accepting voluntary services and imposing stern penalties against those found in violation of the Voluntary Services Act - 31 USC 665(b).

1-9. FRAUD, WASTE AND ABUSE.

Detecting and preventing fraud, waste, and abuse is a personal responsibility. Over half of the annual Army budget is obligated by contract. The Army clearly cannot afford fraud, waste, and abuse in accomplishing its contracting function. Report suspected fraud, waste, and abuse to your immediate supervisor and/or commander.

1-10. ON POST PRODUCT DEMONSTRATIONS

The Contracting Officer is responsible for controlling all demonstrations by vendors. Approval by the Contracting Office is required in advance and is not automatic. Vendor demonstrations and product displays are conducted for the sole purpose of demonstrating the capability of a particular item(s) or service and not for fulfilling mission requirements for an interim time frame. Organizational requests for demonstrations which are approved will be on a competitive basis; that examination and demonstration of item(s) for services will in no way, expressed or implied, obligate the Army to purchase, rent, or otherwise acquire the item(s) demonstrated.

1-11. ADVOCATE OF COMPETITION

An advocate of competition has been established at each army post that has a Contracting Office. The purpose of establishing an advocate of competition is to eliminate unnecessary noncompetitive requirements by functional area involvement in early states of the acquisition planning. (Each noncompetitive requirement estimated to exceed \$100,000 shall be accompanied by a justification signed by the competition advocate.) See paragraph 3-13 for additional information.

PART 2

## THE DIRECTORATE OF CONTRACTING

2-1. ORGANIZATION - The Directorate of Contracting is organized as follows:



2-2. FUNCTIONS - The functions of each of the two major divisions (Services and Acquisition Divisions) are as follows:

a. ACQUISITION DIVISION: This Division is responsible for supporting both management and operations by receiving and reviewing all purchase requests and processing the resultant contractual documents to Defense Finance and Accounting, the using activity and the contractor. Other responsibilities include collection and analysis of data, preparation of reports and briefings, administrative typing support, forms and publications maintenance, and follow-up on delayed performance of purchase and delivery orders for supplies and services, mail service, maintaining supplies, ordering equipment, and maintaining a reference library. This Division operates the automated system for the DOC and gives technical guidance as well as provides special programming. This division is also responsible for the acquisition of installation supplies procured through simplified acquisition procedures. Procurements include, but are not limited to such items as off-the-shelf commercial commodities, troop issue subsistence products, vehicle/equipment rental, and the supply of technically specific instruments. Single transaction awards are executed and established to meet the varying supply needs of resident and tenant military and civilian workforce. Trained buyers perform a full range of contracting functions from reviewing purchase request submittals through product delivery completion. This Division provides information and assistance to both government employees and contractors concerning federal supply acquisitions.

b. In addition to the above, this Division is responsible for all functions related to the acquisition and administration of constructions/supply requirements from inception to close out. Construction is defined as construction, alteration or repair (including dredging, excavating and painting) of buildings, structures or real property. For the purpose of this definition, construction includes improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks,

piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing or assembling of vessels, aircraft or other kinds of personal property.

c. Services Division: This Division is responsible for all functions related to the acquisition and administration of all service requirements, no matter what the dollar value, from inception to the closeout of the file. Services can be defined as work that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Some of the types of services are: Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization or modification of supplies, systems or equipment; routine recurring maintenance of real property, housekeeping and base services, advisory and assistance services, operation of government-owned equipment facilities and systems, communications services, architect-engineering, privatization, transportation and related services and research and development.

## PART 3

### POLICIES

3-1. GENERAL - The Directorate of Contracting (DOC) is responsible for all acquisition projects and purchasing for the Fort Bliss Installation and contract support for the tenant organizations. The contracting support includes training, assistance with

acquisition planning, contract policies, procedures and technical advice to all requiring activities.

3-2. TWO BASIC METHODS OF CONTRACTING: Acquisitions fall into two broad categories: Simplified Acquisitions and Formal Contracts.

a. Simplified Acquisition:

(1) A simplified acquisition is a buy of \$100,000 or less, and generally requires the solicitation of two or more price quotations. A micro-purchase is a simplified acquisition of \$2,500 or less and generally does not require competition. However, vendors must be rotated. Quotations received are, then, evaluated and award made to the offeror whose quotation is in the best interest of the Government when price, delivery and other factors are considered. The use of firm product/service specifications when soliciting prices dictates that the lowest quote is usually the most advantageous. The actual purchase is affected via use of a "Purchase Order". Simplified Acquisitions afford minimal lead time and administrative cost.

(2) Credit Cards:

The Government V.I.S.A. credit card is another simplified acquisition tool that can be used to purchase required supplies/services of \$2,500 or less either over-the-counter or by telephone transactions. The use of the credit card is governed in accordance with the Installation Standard Operation Procedures dated 30 January 2003.

3-3. REQUIRED CONTRACTING LEAD TIMES: Contracting lead time is the administrative time required to process a purchase request, prepare the solicitation documents, advertise the acquisition, receive and analyze bids or offers, obtain necessary approvals, and issue a contractual document. In other words, the time from receipt of a purchase request to issuance of a contract. It does not include delivery time in which the successful bidder can furnish the purchased item or service. For service and construction contracts an additional 30 days are required before actual performance can begin. The following is the lead time criteria:

CALENDAR DAYS	TYPE OF ACTION
30	Simplified purchase from \$2,500 to \$100,000
100	Sealed bidding/Negotiation - \$100,000 and above
ADDITIVES:	+ 15 days for service contracts.
	+ 21 days when sole source approval is required.

+ 30 days on solicitations that require OPARC review.

+ 45 days when a DCAA audit is required.

+ 60 days when a review of technical proposals.

NOTE: These are average lead times. They may vary based on priority and the complexity of the requirement, if a commercial item or service, or the categories of companies we “set-aside” for.

3-4. URGENT/EMERGENCY REQUIREMENTS:

The DOC will give urgent/emergency requirements top priority. Requests for emergency “walk-through” must be justified in writing and signed by the Chief of the requiring activity. The letter of justification must state the nature of the emergency, what impact it will have on the mission of the requesting activity if purchased routinely, and what action will be taken to preclude this condition from happening again. The requesting activity is still responsible for obtaining proper coordination from other applicable agencies. The individual who hand-carries a “walk-through” to the DOC should be the person who will pick the item up from the supplier. This individual must be technically familiar with the requirement.

3-5. STANDARD PROCUREMENT SYSTEM (SPS). SPS is an automated system for providing responsible and responsive processing of all contractual agreements expeditiously. It uses enhanced commercial software/hard ware to significantly increase productivity and efficiency across the entire spectrum of contracting functions for assigned units and activities at Fort Bliss.

3-6. SOLICITATION OF BIDS/PRICES FOR PLANNING OR INFORMATION PURPOSES: It is the general policy of the Federal Government to solicit bids, proposals, or quotations only where there is a definite intention to award a contract or order. Therefore, organizations/individuals must refrain from obtaining quotations or bids for the purpose of planning or estimating costs. For this purpose, a special procedure is available for use only by the DOC. Contact DOC for assistance.

3-7. DISCLOSURE OF GOVERNMENT ESTIMATES. Government cost estimates must be treated as confidential information and designated FOR OFFICIAL USE ONLY. Such estimates will not be revealed to the public until after bid opening/award. Disclosure prior to this time puts Contracting personnel at a disadvantage in dealing with proposed contractors and gives those who have received the information an unfair advantage over others competing for the same work.

3-8. CONTRACT BETWEEN THE GOVERNMENT AND ITS EMPLOYEES: In accordance with FAR 3.600, contracts between the Government and its employees are prohibited, except for the most compelling reasons; i.e., where the needs of the

Government cannot otherwise be reasonably satisfied. When a Contracting Officer has reason to believe an exception exists, approval may be requested from ACA. Complete, written justification is required from the requesting activity.

3-9. ADVANCED CONTRACTING PLANNING PROGRAM. The purpose of this program is to assist DOC customers in planning for maximum contracting lead time (see Para 3-4) on normal recurring requirements. The customer is notified by letter well in advance of required lead time so that a purchase request may be forwarded to the DOC to incur no lapse in service. The customer is required to acknowledge the notification letter and forward the purchase request by the stated date. This program in no way relieves the customer from the ultimate responsibility for being aware of required contracting lead times and forwarding the request in sufficient time for a contract to be awarded prior to the expiration of the existing contract.

3-10. MODIFICATIONS TO EXISTING CONTRACTS.

a. The perfect contract fulfills the Government's requirements free of ambiguities in specifications and drawings and precludes performance problems during the life of the contract. However, perfection is rarely achieved. Therefore, modifications may be needed to correct deficiencies in designs, specifications, changed conditions or unforeseeable problems.

b. To effect a modification, the request must be in writing, giving a full explanation of what is involved in the change and why it is required. This information is required by the Contracting Officer to make a determination as to whether or not the change is "written in the scope" of the contract. The above information will be provided with a Purchase Request, a cost estimate breakdown, and revised drawings or specifications if required.

c. A cost estimate breakdown will be furnished to the Contracting Officer for increased, decreased or no-cost changes, as it is an essential tool for negotiating with the contractor to effect the modification. Every modification must have sufficient back-up data to stand alone as if it were a contract in itself.

3-11. RESTRICTION AGAINST PURCHASE OF FOREIGN MADE ITEMS.

Purchase of foreign made items for use by Federal Agencies in the United States is prohibited by the "Buy American Act". Contracting of component parts for a foreign-made item already in use is one of the rare exceptions to this restriction. Any purchase request for foreign made items must be accompanied by a written justification signed by no lower than the chief of the requiring activity. This justification does not apply when items are produced or manufactured by sources qualifying under the Trade Agreement Act (FAR 25.100).

3-12. SMALL BUSINESS PROGRAM. The Fort Bliss Small Business Program supports a DOD-wide policy to promote and encourage small and disadvantaged businesses. Additionally, under the Small Business Administration 8(a) program, the

Department of Defense has the authority to contract directly with the Small Business Administration for supplies, services and construction projects. These transactions are called 8(a) contracts, named for section 8(a) of the Small Business Act. The Post and Small Business Specialist (SBS), an individual assigned to the DOC, reviews each requirement over \$100,000 for possible set-aside to the SBA for possible award of an 8(a) contract. The Small Business Administration locates one of their 8(a) contractors and designates him/her to negotiate with the government for a subsequent award. Upon completion of a satisfactory negotiation, two contracts will be written by the DOC. One contract will be written directly to the Small Business Administration as the Government Contractor. The second Contract will be written between the Small Business Administration and the 8(a) contractor, which in reality contracts as a subcontractor for the SBA. The objective of the 8(a) program is to foster business ownership by socially and economically disadvantaged individuals, giving them an opportunity for full participation in the free enterprise system.

Advanced Planning. Proper advanced planning for future purchase requests can result in a savings of time and money. Assigning all requisitions a priority designator is not a guarantee that the item will arrive on time, since a high priority rate could result in a backlog of priority buys. With proper planning, your routine purchase request can be bought and delivered in a timely manner, with a savings of your unit dollars. Routine purchase requests allow Contracting to solicit competitive pricing from several vendors to compete for the items, which generally means lower prices and eliminates costs associated with priority “Buys”.

### 3-13. JUSTIFICATION AND APPROVAL (J&A) FOR OTHER THAN FULL AND OPEN COMPETITION (ACTIONS OVER \$100,000)

a. Administrative Lead Time for J&As: The Directorate of Contracting has established a 3-day action time for J&As. DOC’s goal is to accept the J&A within this time frame and send it forward (if required) or return it to you with a statement addressing why DOC cannot support your position in its present form. Adequately addressing the FAR requirements of developing your J&As should help to move them through the Directorate of Contracting or to HQ, ACA (where required) for approval.

b. It is important to understand that the Army acquisition community must “think” competition first. This is in contrast to thinking sole source first and then trading an exception to the Competition in Contracting Act (CICA) to support it. Acquisition strategies must be planned early so there is a lesser need for sole source J&As as opposed to full and open competition. The FAR requirement for writing of J&As has been standardized and provided for ready reference at the end of this section. Each J&A request will be required to be in this format for review and/or approval.

c. Sole source acquisitions are any acquisitions where only one source is to be solicited. Federal Acquisition Regulations require strict justification for contracting without providing for full and open competition. FAR Part 6.302 states the circumstances permitting other than full and open competition. They are:

(1) Only one responsible source and no other supplies or services will satisfy agency requirements;

(2) Unusual and compelling urgency;

(3) Industrial mobilization; or experimental, developmental, or research capability;

(4) International agreement;

(5) Authorized or required by statute;

(6) National security;

(7) Public interest.

d. You, as the requiring activity are required to submit, along with the requisition, a justification for permitting other than full and open competition on any requisition which is expected to exceed \$100,000. As a minimum, the justification should contain the following:

(1) Identification of the agency and the contracting activity and specific identification of the document as a justification for other than full and open competition.

(2) Nature and/or description of the action being requested.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) An identification of the statutory authority, which permits other than full and open competition.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure offers are solicited from as many potential sources as is practicable.

(7) A listing of the sources, if any that expressed, in writing, an interest in the acquisition.

(8) Any other facts supporting the use of other than full and open competition.



(9) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for supplies or services required.

e. The justification will include the following certification signed by the individual preparing the justification:

“I certify that the information contained in this justification is accurate and complete”.

f. Below are the signature/approval requirements for the applicable dollar thresholds:

(1) Actions not exceeding \$500,000

(a) Signatures Required.

1 Contracting Officer

(2) Actions between \$500,000 and \$10,000,000

(a) Signatures Required:

1 Program Manager - as above

2 Chief of Requiring Activity or equivalent - as above

3 Small Business Specialist (coordination)

4 Local SJA Review

5 Local Competition Advocate review and

recommended approval

(b) Approval Authority - OPARC HQ, ACA

(3) Actions between \$10,000,000 and \$50,000,000:

(a) Signatures Required:

1 Program Manager - as above

2 Chief of Requiring Activity or equivalent - as above

3 Local SJA Review

- recommended approval                      4            Local Competition Advocate review and
- recommended approval                      5            HQ, ACA Competition Advocate review and
- (b)      Approval authority - Commanding General - ACA
- (4)      Actions above \$50,000,000:
  - (a)      Signatures Required:
    - 1            Program Manager - as above
    - 2            Chief of Requiring Activity or equivalent - as above
    - 3            Local Competition Advocate review and
  - recommended approval
  - (b)      Approval Authority - SALT.

JUSTIFICATION AND APPROVAL EXAMPLE: The sample should be used as guidance and is not intended to replace the proper authority found in FAR 6.303-2.

#### JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION

1.      CONTRACTING AGENCY: Specify the contracting agency responsible for this action.

For instance: “DOC, Fort XXX”. There is no need to include a mailing address.

2.      DESCRIPTION OF ACTION: Describe the nature of the contractual action for which approval is requested (i.e., new contract, modification). Include type of contract (i.e., FFP, CPAF, etc.): type

a.      For instance: “A new firm-fixed price contract citing FYXX OMA funds.”

b. If there are circumstances where more than one type of funds is cited, use paragraph 3 below to describe the type and amount to be used for each part of the requirement.

3. DESCRIPTION OF SUPPLIES/SERVICES: Describe the supplies and/or services to be acquired. Include quantities and/or the performance period, as well as the estimated total value, if any.

a. Briefly describe the supplies and/or services -- it is neither desired nor required for detailed specifications or equipment lists to be included. Explain the requirement, as much as possible, in layman's terms so it can be understood by a non-technically oriented reviewer who may not be familiar with the requiring activity or the project. Do not "camouflage" the true meaning or intent of the action with technical terminology or "buzzwords." If the general description of the type of supplies and services is not plainly understandable, then chances of repeated questioning or action disapproval are significantly increased.

b. If the action described is a modification to an existing contract, be sure to distinguish clearly between the work covered by the basic contract and the additional work to be obtained by the proposed modification.

c. Identify the requiring activity.

d. The amount shown in paragraph 3 of the J&A must be the same amount shown on the Justification Review Document.

4. AUTHORITY CITED: Identify the statutory authority, FAR citation and FAR title permitting other than full and open competition.

For instance: "10 U.S.C. 2304(c)(1), as implemented by FAR 6.302-1, Only One Responsible Source." If the FAR contains subparagraphs describing different circumstances, which may justify use of the authority you have cited, identify the appropriate subparagraphs.

5. REASON FOR AUTHORITY CITED: Describe how this action requires the use of authority cited. If applicable, identify the proposed or potential contractor(s) and include a discussion of the proposed contractor's unique qualification for fulfilling the contract requirements. If the authority is urgent, include the required delivery schedule and lead-times involved.

a. This is the most important paragraph in the J&A. You must show why the proposed acquisition MUST be accomplished through other than full and open competition, and why the authority in paragraph 4 applies. You must provide a well-reasoned, detailed discussion of the issue that will make it crystal clear to someone who

may have never heard of your organization or your requirement why full and open competition cannot be used for this procurement.

b. For clarity, suggest you divide paragraph 5 into several subparagraphs rather than putting several unrelated thoughts together.

c. Discuss the events/history/circumstances, which have led to the current situation that requires use of procedures for other than full and open competition.

d. If “urgency” is the basis for the J&A, include a chronological explanation of events that caused the urgent situation. At the very least, include discussion and dates for: when requirements became known by the requiring activity; the required performance/delivery date; events that happened before the contracting office was notified of the requirement; when the contracting office was advised of the requirement; when the formal procurement request was received by the contracting office; when vendors were contacted; when proposals were due; and when award was made. Be sure to explain any actual or apparent time lags between events.

e. If the date the requirement first became known indicates that normal contracting methods could have satisfied the required delivery date, an explanation of reasons for delay is required. If normal contracting methods could not have satisfied the required delivery date, describe the circumstances, which caused this emergency and how they will be prevented in the future.

f. What are the verified minimum requirements of the item/service? Include a discussion of the unique requirements of the item/service that necessitate a noncompetitive action. Describe how the required delivery/performance date impacted the decision to restrict competition.

g. You may not cite expiring funds, lack of funds, or time waiting for funds as reasons for using other than full and open competition. This is NOT an acceptable justification. If an activity has a known requirement, coordination should be initiated with the contracting officer as soon as the requirement is identified. There is much that can be done in the advance planning stage that can significantly reduce the amount of processing time once funds are received. In some cases, it may be possible to complete actions to the point of award. The key is to get the contracting office involved early in the process.

h. Identify the constraints such as schedule requirements, unique features and mandatory requirements, or the existence of patent, proprietary data, copyright or other such limitations, which restrict competition.

i. Fully describe the detrimental effects to the mission of the requiring activity or to the government that would result if this J&A was not approved and, consequently, the product or service could not be provided. A general statement of mission failure is not sufficient. The statements must be able to pass the “SO WHAT”

test. Give specific examples of the nature and severity of the impact with dollar or other factors wherever possible.

j. You may not cite conclusions (for example: “the government will be injured”) without explaining the facts, which form the basis of that conclusion. You must fully explain the reasons for the “injury” and why that “injury” cannot be tolerated.

k. You should not say something like “any delay will be costly” without explaining how it will be costly and what the cost impact will be. Use “actual” for dollars or other resource impacts whenever possible.

6. ACTION TO OBTAIN COMPETITION: Describe efforts made to ensure that offers are solicited from as many potential sources as is practicable. Also describe the extent of effective competition anticipated for this acquisition.

a. Use of Exception 2 (Urgency) requires soliciting as many sources as is practicable under the circumstances. State how many sources were solicited and how many offers were received.

b. If paragraph 5 fully explains why competition was not feasible for the particular action, you should include something like: “Based on information in paragraph 5, above, competition for this action was not feasible.”

7. ACTIONS TO INCREASE COMPETITION: Include a statement of the actions taken (or to be taken) to increase competition before any subsequent acquisition of the supplies or services are required. There may be instances where it is not possible to compete the current acquisition; explain how competition will be increased or enhanced for the required supplies or services (to include breakout or other considerations). If the requirement is a repair part, address whether or not it has been screened.

a. One example may be: “This is a one-time requirement and no future similar acquisitions are anticipated. However, if a similar requirement arises, every effort will be made to compete it to the maximum extent practicable.”

b. Another instance might be expressed: “The requiring activity is currently preparing specifications that will be adequate for full and open competition on a follow-on requirement anticipated for execution during FYXX. A market survey will be performed for the follow-on requirement to identify all potential sources.”

8. MARKET SURVEY: Describe the extent of the market survey (FAR 10.001) conducted to identify all qualified sources and the results thereof.

a. Market survey (as defined in FAR 10.001) means “attempts to ascertain whether other qualified sources capable of satisfying the Government’s requirements exist. This testing of the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate

requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (e.g., technical/scientific journals, or the FEDBIZ OP), or solicitations for information or planning purposes.”

b. Market surveys should be accomplished in a timely manner early in the acquisition process (prior to preparation of a J&A or acquisition plan) and tailored as appropriate to the goods or services being acquired. Market surveys have traditionally been the responsibility of technical personnel. However, since some of the recommended techniques are more appropriately accomplished by the contracting office, market surveys should be conducted as a joint coordinated effort between the requiring activity and the contracting office to maximize results. Prior to contracting any potential sources, the requiring activity must discuss the proposed market survey plan with the contracting officer to avoid any possible unauthorized vendor contacts or inadvertent release of advanced acquisition information.

c. The intent of market surveys is to create or increase competition by locating and ensuring that all interested and capable sources are given the opportunity to compete for the goods and services to satisfy our minimum requirements. Competition should help the government receive the best value for its money. The J&A must include a detailed description and results of the market survey or a statement discussing why one was not conducted.

d. A “sources sought” synopsis is a valuable tool to determine whether sources other than the suggested sole source can satisfy the requirement. One advantage to this type of synopsis is that it can be issued as soon as the requirement becomes known. You do not have to wait until funds are provided or for the details of the procurement to be finalized. There is no set format for this type of synopsis as there is for a regular synopsis. You should include all known performance and/or technical information so contractors can determine whether they may be able to satisfy the requirement. THE ACA Special Competition Advocate will be looking for “sources sought” efforts to be discussed in J&As.

e. Inadequate planning is an unacceptable justification for not conducting a market survey.

f. The inadequacy of technical data is also an unacceptable justification for not conducting a market survey. The marketplace can sometimes be a better judge of the adequacy or even the necessity of technical data.

g. It is unacceptable to justify a sole source on the fact that a technical activity found a desirable product during a market survey (or an unofficial evaluation of available products) that has a lower price than others they reviewed. The process of finding the best product at the best cost must be left to the contracting officer.

9. INTERESTED SOURCES: Include a listing of the sources that expressed written interest in the acquisition.

a. For those urgent requirements not synopsized in the FedbizOp, be sure to include the name of all offerors submitting a proposal. An offeror's address and amount of the offer are not required.

b. Tailor verbage in this paragraph to satisfy the circumstances of the particular requirement. The following examples are not all inclusive:

(1) For other than Exception 2 (Urgency): "ABC Corp. is the only known source capable of providing the required services. To date, no written responses have been received to the FedbizOp notice; however, all offers received shall be considered."

(2) For Exception 2 (Urgency): "ABC Corp, and XYZ Co. submitted proposals. Award was made to ABC Corp. This requirement was not synopsized in the FedbizOp pursuant to the exception in FAR 5.202(a)(2)."

(3) If competition is limited due to time constraints: "ABC Corp. is the only known firm capable of providing the required level of support for this interim period at such short notice. This requirement was not synopsized in the FedbizOp pursuant to the exception in FAR 5.202(a)(2)."

10. OTHER FACTORS: These may constitute other factors supporting the use of other than full and open competition such as:

a. Explain why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available.

EXAMPLE: Acquisition Data Availability: Not applicable to this acquisition since no special technical data or specifications were required.

b. When 10 U.S.C. 2030(c)(1) (only one responsible source, FAR 6.302-1) is cited for follow-on acquisitions, provide an estimate of the cost that would be duplicated and the basis and derivation of the estimate.

EXAMPLE: Follow-on Contracts. Not applicable to this acquisition.

c. When 10 U.S.C. 2304(c)(2) (Unusual and Compelling Urgency, FAR 6.302-2) is used, provide data, estimated cost, or other rationale as to the nature and extent of the harm to the Government.

EXAMPLE: Unusual and Compelling Urgency. If the blankets are not provided, the Government will have to room the troops at local hotels. The temperature becomes unbearable in the barracks if at 40 degrees Fahrenheit or below (considered unhealthy if for a prolonged period, AR 370-11). The minimum estimated cost per day for hotel accommodations is \$45,000. Additional total costs for administration and transportation for the six-week period left of the remaining cycle are estimated at \$3,000 for a grand total of \$1,893,000. Also, the additional time required for transportation will create a chaotic situation for S-3 training personnel with the ultimate result of a serious disruption in the training mission of this installation. The additional time required per day to accomplish one full day of training is estimated at 2 hours, thereby not leaving sufficient time for rest by the troops and training personnel. The training schedules have been created to allow a delicate balance between the training requirement and the requirements of rest and recreation. A substantial disruption in the training schedule, such as this one, can result in the extension of graduation date, which, in turn, will result in delays in in-processing new recruits, putting a serious strain in all DA training support echelons.

11. TECHNICAL CERTIFICATION: "I certify that the supporting data under my cognizance which are included in the J&A are accurate and complete to the best of my knowledge and belief."

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

12. REQUIREMENTS CERTIFICATION: "I certify that the supporting data under my cognizance which are included in the J&A are accurate and complete to the best of my knowledge and belief."

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

13. MANAGEMENT REVIEW/APPROVAL: "The requirement herein described is a valid requirement of the activity named in paragraph 3 of this J&A." The technical and requirements information contained in the J&A represent the minimum needs of the government. The only way to satisfy this requirement is by limiting competition as described herein (See Para 3-16(f)(5) for signature responsibility).

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_



14. FAIR AND REASONABLE COST DETERMINATION: “I hereby determine that the anticipated cost for this contract action will be fair and reasonable.” Or, for those J&As citing Exception 2 (Urgency), submitted after award:”...that the cost for this contract action was fair and reasonable.” Provide the basis for this determination (e.g., describe techniques used or to be used to determine fair and reasonable price, such as cost analysis, audit, should cost, independent government estimate, etc.).

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: Contracting Officer SIGNATURE: \_\_\_\_\_

15. CONTRACTING OFFICER CERTIFICATION: “I certify that this J&A is accurate and complete to the best of my knowledge and belief.”

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

#### APPROVAL

Based on the foregoing justification, I hereby approve the procurement of (state equipment/services being procured) on an other than full and open competition basis pursuant to the authority of 10 U.S.C 2304(c)( ) (fill in the blank), subject to availability of funds, and provided that the services and property herein described have otherwise been authorized for acquisition.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approving Authority

a. Limitations. Contracting without Providing for Full and Open Competition Shall Not be Justified on the Basis of:

(1) Lack of advanced planning by the requiring activity; or

(2) Concerns related to the amount of funds available (e.g., funds will expire, end of the fiscal year, etc.) to the agency or activity for the acquisition of supplies or services.

b. Additional Limitations;

(1) The Contracting Officer and the SJA have to scrutinize and question the validity and legal sufficiency of the justification.

(2) Self-serving conclusional statements cannot be used, unless they are supported by facts.

(3) Approval time.

c. You should remember that the Contracting Officer, and not the requiring activity, is the final authority for determining the adequacy of any sole source justification prior to contract placement.

JUSTIFICATION FOR NON-COMPETITIVE ACQUISITION. Requesting activities that submit acquisitions under \$100,000 where only one source is to be solicited and circumstances does not permit full and open competition as a minimum, the justification should contain the following:

a. Description of Requested Service/Supply Item (including estimated value).

b. Vendor Source Evaluation and Selection.

(1) Explain how the requested vendor was determined to be the only vendor that could do the job. Explain what steps were taken to conclude that no other known source exists. Identify any special or unique qualifications that make this vendor satisfy the requirements.

c. Reason Why This Requirement Cannot Be Satisfied Through Competitive Acquisition.

(1) Discuss the constraints such as schedule requirements, unique qualifications or other such limitations, which limit this action to a non-competitive acquisition.

d. Impact if Disapproved.

(1) State impact on accomplishment of mission if this request is not approved.

e. Describe the benefits that can be expected from this action.

(1) Include how the action is expected to benefit the requiring activity, i.e., anticipated economics in terms of dollars, man-hours, personnel or units of production.

f. Requirements Certification

“I certify that the supporting data under my cognizance which are included in this Justification and Approval are accurate and complete to the best of my knowledge and belief.”

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

## PART 4

### PURCHASE REQUEST

4-1. WHEN ARE PURCHASE REQUESTS REQUIRED? A purchase request constitutes administrative authority for the purchase of supplies and services. It is required for any obligation of funds, whether a new contract or a change to an existing contract.

4-2. SPECIFICATIONS AND DESCRIPTIONS. The primary difference between a specification and a description is the degree of detail. A specification is an in-depth explanation of the service or supply item by size, color, weight, material used in fabrication, etc. An item can be literally constructed based on the information in an adequate specification. A description on the other hand is a less involved explanation. It is written in simple language such as you would use in your own private purchases. A good rule of thumb when preparing either is to describe the requirement as though you are not going to receive any part of it you omit (because chances are you aren't)! Do this without the mention of a brand name or part number and you are off to a good start. If you add a brand name it will be considered as a standard of quality only and an “or equal” item will be bought, unless the request is accompanied by a sole source letter.

### Purchase Descriptions:

(1) A purchase description should be written in such a manner as to clearly describe the essential physical and functional characteristics of the item being procured. It should include as many of the following characteristics as necessary to express the minimum requirements of the Government.

- (a) Kind of Material.
- (b) Electrical data, if any.
- (c) Dimensions, in terms of minimums or maximums.
- (d) Principles of operation.
- (e) Restrictive or significant environmental conditions.
- (f) If part of an assembly, the location within the assembly.
- (g) Essential operating conditions.
- (h) Special features, if any.
- (i) Intended use.
- (j) Operation to be performed.
- (k) Equipment with which the item is to be used.
- (l) Other requirements, as appropriate.

(2) As you can readily see, an adequate purchase description can easily be prepared by the average specialist. Labels, tags, etc., often contain considerable information from the manufacturer. However, if a description is not feasible, a less desirable alternative exists - "brand name or equal".

c. Brand Name or Equal Descriptions. "Brand name or equal" descriptions may be used only as a last resort for supplies/equipment, when it is otherwise infeasible to describe the requirement. One feature of this procedure must always be included; the salient characteristics of the item must be described, i.e. what criteria must the "equal" meet. Failure to do this will not only prohibit DOC from accepting your purchase request but may also subject you to having to accept a product you can't use. It is a long-standing legal principle that a product must be accepted as "equal" if it performs the

same general function as the brand specified. As a sample, a 20 inch “Brand X” lawn mower with a 2 H.P. engine would be an equal unless you listed the 22 inch cut and 3 H.P. engine as salient (essential) characteristics.” Any Brand name description received without an accompanying “sole source” justification (appendix 1) will be considered a “Brand name or equal” description and be purchased accordingly.

d. Overly Restrictive Specifications. A specification that is too strict can be just as undesirable as the opposite extreme. Whenever possible, a description should allow tolerances, e.g. if an item is required to be not longer than a certain length due to space requirements, you can state “must not exceed \_X\_ feet in length”; likewise, with other characteristics such as weight, size, etc.

e. Inadequate Specifications/Descriptions. It is a requirement of contracting instructions that purchase requests containing inadequate specifications or descriptions are returned to the initiator. Careful screening of purchase request item descriptions by initiating authorities will preclude delays in contracting action. Poor descriptions/specifications contribute to misunderstandings between the Government and the contractor and frequently lead to either inferior products or unnecessarily high prices or both. Contracting Officers are charged with the responsibility for reasonable prices to satisfy the minimum needs of the Government. Consequently, they are prohibited from accepting inadequate or overly restrictive descriptions/specifications.

4-3. DELIVERY TIME. If you are concerned with “stretching” the budget dollar, be certain to take a good look at the “Not Later Than” delivery date on purchase requests that pass over your desk for review, approval, or funding. Extremely short delivery requirements generally become excessively expensive purchases. First, there is insufficient time to contact the greatest number of qualified vendors and some of those contacted may not be able to meet the delivery terms. Second, short delivery requires priority performance of the contractor, which increases the price. Of course, another thing to consider is that short delivery requests get into line for action ahead of other requests and can delay other more important contracting actions. Therefore, careful planning should be given to your requirements and a realistic delivery date provided to DOC. Information necessary to determine the delivery date and resultant priority for your purchase is cited in paragraph 3-4, of this pamphlet.

#### 4-4. DOCUMENTATION THAT MUST ACCOMPANY PURCHASE REQUESTS.

a. Always Required. Funds availability and a Purchase description or specifications. If already on a current contract, an abbreviated description with reference to the specific contract line item (by contract number, NSN, page number, etc.) will suffice.

b. Required as Indicated.

(1) For Service Contracts over \$100,000.

(a) Letter designating a Quality Assurance Evaluator (QAE) in accordance with OFPP #4, October 1980.

(b) A detailed cost estimate breakdown.

(2) For Construction Projects Such projects are acceptable only from DPW&L.

(a) Cost Breakdown - Mandatory over \$100,000; at Contracting Officer's option if \$100,000 or under.

(b) Drawings/Specifications.

(c) Designation of project inspector and engineer.

(d) Itemized cost breakdown supporting liquidated damages.

(e) Classification of work for determining applicability of wage rates.

(3) For Contract Repair Service Requirements. The following must either accompany or appear on the purchase requests.

(a) Whether in-house repair capability is available.

(b) The nature of the equipment malfunction, which indicates a need for repair.

(c) Whether on-site repair is required. If so, state building number, room number, name and telephone number of contact point at the equipment location.

#### 4-5. COMPETITION ADVOCATE PROGRAM

a. The purpose of the Competition Advocate Program is to eliminate unnecessary noncompetitive requirements by involvement in early stages of the acquisition planning. The Competition Advocate is responsible for insuring that:

(1) Specifications are written in a manner that does not restrict contract specifications or proposals to one source unless extremely strong justification warrants such action.

(2) A completed Noncompetitive Analysis Checklist (Appendix 2), signed by the Competition Advocate, is forwarded with proposed non-competitive requirement estimated to exceed \$10,000.00.

(3) All personnel developing specifications are to be aware of the need to write unrestrictive specifications and statements of work and minimize noncompetitive acquisitions.

b. Customer preference and brand name items for resale by commissary and MWR activities are exempted from this program.

#### 4.6 PURCHASE OF AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE):

- a. The DOIM is responsible for ensuring that all elements of approval/procurement packages are accurately written and complete prior to submission to the Ft. Bliss DOC.
- b. The Purchase Request will be prepared in PRWeb by the Requesting Activity. The Purchase Request will be sent to the Budget Office for approval and will then route the request to DOIM for the CAPR.
- c. The Purchase Request will be sent by PRWeb to DOC for processing.

#### 4-7. GOVERNMENT FURNISHED PROPERTY.

a. Contractors are ordinarily required to furnish all property to perform Government contracts. There appears to be a misconception that all real and/or personal property being used under in-house operations must be offered to a contractor to achieve a true cost comparison. Instead, an analysis should be conducted to determine whether the real and/or personal should be offered to contractors in the solicitation.

b. The analysis should include but not necessarily be limited to, the cost to the Government for property administration, the cost for replacement if the equipment fails, and the Government's liability if the offered equipment is not available or becomes unserviceable and whether the real and/or personal property would be useful to the contractor in the performance of the mission. As a general rule, only high dollar value or very specialized equipment in good condition should be considered for possible contractor use.

c. Under certain circumstances, it may be in the Government's interest to require that the contractor use Government real and/or personal property. (Such a requirement may pertain when work is performed on the installation, specific pieces of equipment are so costly that the contractor would pass the costs to the government or the

equipment supports an operation so critical that the Government would have to be able to step in and operate if the contractor defaults or abandons the work.)

d. During the planning phase the Functional Area Chief (FAC) shall contact the Property Administrator at the Directorate of Contracting to insure that proper advanced planning for Government Furnished Property (GFP) can take place.

## PART 5

### CONTRACT ADMINISTRATION

5-1. INTRODUCTION - The contracting process does not end with the award of a contract, purchase order, or delivery order. All the effort spent in planning, describing, and funding your requirement could potentially go for naught without effective administration of the resultant contractual instrument. The role of contract administration is to complete the cycle and assure the customer's needs are, in fact, satisfied.

5-2. POST AWARD AND PRECONSTRUCTION CONFERENCE - A "pre-con" is held on most construction and service contracts where work will be performed primarily on a Government installation. The pre-con is normally held in the DOC Conference Room. The purpose of the conference is to acquaint the contractor and interested post personnel with various aspects of contract requirements, clauses, working conditions, storage areas, security, traffic, hauling routes, permits, QAE functions, etc. The pre-con is attended by DOC Personnel, the Contractor and the Subcontractor, the requesting activity (DPWL, etc), the QAE and other agencies such as Military Police, Fire Department, Safety Office, etc.

### 5-3. NON-PERSONAL SERVICE CONTRACT ADMINISTRATION

a. Examples of contracts in this category are custodial, maintenance, rental, refuse collection, and packing and crating. Services usually have no "end product". The



contractor is given a task to complete without direct Government supervision. As an assigned recipient of these services, it is your responsibility to ensure the contractor has provided not less than the minimum contract requirements. Any perceived deviations from the statement of work should be brought to the attention of the Contracting Officer by telephone and followed up in writing. Do not attempt to interpret the statement of work for the contractor and do not direct changes or accept substitute performance. Contact the Contracting Officer. (See more discussion on changes below.)

b. Quality Assurance Evaluation (QAE) Program: This program is important, it concerns big bucks, and it affects you. OFPP #4 is the government regulation and while it's the commander's program, it's orchestrated by the Contracting Officer and the commander. Quality Assurance Evaluators (QAEs) are selected by the Functional Area Chief (FAC) and designated in writing by the commander. QAEs will get special instructions from the Contracting Officer who, in turn, will inform the contractor of their name, position, duties and responsibilities. Although there are some exceptions, the QAE program is used for service contracts that are recurring and continuous in nature, are worth over \$100,000 per year and take place on a Government installation. Essentially, the program is a formally organized way of observing the contractor's performance and assuring quality. QAEs are the "eyes and ears" of the Contracting Officer. QAEs will report regularly on their observations and the Contracting Officer will rely on that reporting to deal with discrepant performance. The role of the QAE is not controlling quality, but assuring the quality control plan is followed. The QAE samples performance, identifies trends, and reports to the Contracting Officer. A few important techniques or tools are worth discussing:

(1) Quality Assurance Surveillance Plan (QASP): This plan tells what to expect in the way of performance. It generally follows, point for point, the requirements of the specifications and tells the QAE what to look for in observing contractor performance. The Functional Area Chief (FAC) determines, along with the Contracting Officer (CO), the level of quality assurance evaluation required and writes a QASP if a standard plan is not available. This QASP is sent to the DOC when the purchase request package is sent.

(2) Work Schedule/Sampling Plan: This gives the QAE a pre-determined direction as to what performance should be observed, where and how often. QAEs develop this plan along with the guidance of the Contracting Officer to promote optimum observation of the contractor's total performance over a distinct period of time. The Army philosophy is to concentrate on a contractor's total performance to identify trends and de-emphasizes isolated discrepancies in performance.

(3) Reporting: QAEs will be briefed by the Contracting Officer regarding the proper format for reporting problems. QAEs will need to certify that services have been performed. The Contracting Officer relies on their certification to pay the contractor or deduct for services not performed. Certification of services rendered is accomplished normally by completion of the receiving report.

(4) Specific QAE Duties: QAE responsibilities are outlined in OFPP #4. They include the following:

- (a) Maintain technical competency in the functional area to be surveyed.
- (b) Obtain and maintain proficiency in contract surveillance techniques.
- (c) Help write the work statement and surveillance plan.
- (d) Do contract surveillance according to the surveillance plan.

5-4. CONSTRUCTION CONTRACT ADMINISTRATION - Noticed your building being demolished around you? You say you've just been covered with a drop cloth and had a painter mount your desk, or your power and water went off before you made it out of the latrine? Chances are you're in the middle of a construction contract! Full administration is afforded these types of contracts in an effort to avoid these kinds of happenings. As a "receiver" of these types of contracts, there are some essentials you should know:

a. Each of these contracts is assigned an inspector from your servicing DPW&L. These contracts have a pre-construction conference and work is not started until a notice to proceed is issued. This usually occurs within 45 days of award. This conference gives the Government the opportunity to inform the contractor of his obligations, one more time; discuss safety and fire precautions; and generally get everyone organized for the start of work. The user (building occupant) is usually invited to these conferences, but if for some reason you were overlooked, contact DPW&L for the time and place. This conference is not a place to decide how the work should be done, that's all stated in the contract, but a time to discuss the labor standards provisions and other contract provisions to include fire security and safety to ensure everyone knows what is happening. The contract administrator chairs the meeting.

b. Each contract, regardless of value, has a designated inspector. The inspector's authority, unless otherwise expanded, is similar to that of a QAE: observe and report. The inspector has no authority to interpret the specifications for the contractor, effect changes, or direct the contractor's employees; neither does the building occupant. They cannot stop the work nor accelerate it. Yet, the inspector is "cloaked in apparent authority" and the contractor may rely on a seemingly innocent action or suggestion and have cause to prosecute a claim against the Government. Inspectors must be equally aware, and not expect more than the inspector's authority allows.

c. Changes. Like taxes, changes are inevitable, but it's quite satisfying if they can be avoided. Changes are inversely related to the effectiveness of planning, coordination and forethought. If the Government team has taken all reasonable steps to describe and execute the project (services, supplies, construction; large and small dollar value) chances are there will be no changes. If a change appears necessary, there are some principles you should know.

(1) Authority: Authority in Government contracting to make changes is vested only in the Contracting Officer. The Contracting Officer is granted "actual" authority by virtue of the issuance of a warrant. Other people in the contracting cycle; e.g., inspector, QAE, user, and Government employees, often have "apparent" authority. Regardless of rank or organizational position, they have no real authority with respect to a contract, but contractors often do take advantage of them if they're not on guard. The best way to protect yourself and the Government is to take no action, overt or covert, that would convey or imply an interpretation of the contract terms, conditions or specifications or give the impression that a change may be necessary. Such harmless actions as suggesting a personal preference, or implying a higher authority has a different idea (The "Colonel doesn't like green") could potentially subject the Government to a claim based on the theory of a "constructive change". It may be a valid claim but it could take extensive energy, research and money to sort it out. Avoid this circumstance and communicate with the Contracting Officer.

(2) Why Change? There are many valid reasons for change. Believe it or not, each reason is described in the terms and conditions of every contract. The Contracting Officer is quite familiar with those terms and conditions, and therefore, must be involved from the outset so that the method of handling the change affords maximum protection of the Government's rights. Often, what would appear to be a change to the layman is actually already required of the contractor and can be directed by the Contracting Officer without charge. If the Contracting Officer is involved in the "problem" from the beginning, your time and effort may be minimized. The following is a brief summary of some legitimate reasons for change.

(a) Defective specification or description: Government provided specifications will not produce a desired end result.

(b) Impossibility or impracticability of performance: Task required cannot be accomplished with specified or current technology or would be impractical without an unreasonable amount of effort.

(c) Differing site condition: A condition exists which was not reasonably expected by either party.

(d) Change of requirement:

1 An uncontrollable event after award requires something different than originally conceived. If large in magnitude, we may terminate for convenience and start over.

2 Method or manner of work performance does not suit Government needs.

3 Government furnished property or material has changed or is not available.

4 Different method of packing or packaging desired, or changes in destination are required.

Important to remember is that even though these may be legitimate reasons for change, all changes are potentially costly; i.e., the contractor has a right to claim monetary compensation. The Government has an obligation to pay all reasonable costs, time and money, that result from changes. That is why the Contracting Officer must do the directing and do it in a manner allowed by Contracting regulation.

(3) Procedure:

(a) The preferred method of effecting a change is to settle all potential claims before direction is given by the Contracting Officer. To do this, the Contracting Officer needs a written request for the change in the same level of detail as the original contract request. The Contracting Officer also needs funds that represent a reasonable impact of the change in the contract. Prior to effecting the change, the contractor will be asked to propose on the changed work. Negotiation may ensue until the parties agree on all terms, conditions, price and time adjustments that should be made. The result is a Supplemental Agreement, which is a contract in itself.

(b) The Government does have unilateral rights to direct changes within the scope of the contract, and frequently exercises them through a Change Order when time does not permit a negotiated Supplemental Agreement. The contractor still has the right to enter a claim, and each change order must be definitized by a Supplemental Agreement before final payment. Negotiating the change as in paragraph (a) above is the preferred method. This allows us to establish the price before the contractor begins work. Once the contractor has started, negotiations may be difficult, since the contractor usually has substantial leverage.

(c) Before any change can be requested, funds have to be available. The following, as a minimum, shall be furnished when requesting a change.

1 Electronic Purchase Request through PRWeb.

2 Revised specifications/drawings

3 Detailed Cost Estimate.

4 Reason for change.

5 Is change within the scope of the Changes clause?  
If not, give reasons why only the existing contractor can perform the change.

6 How much additional time will be required to  
accomplish the change.

5-5. RECOURSE AGAINST THE UNSATISFACTORY CONTRACT. The Contracting Officer and/or contract administrator closely monitor all contractor progress/performance reports. In the event of unsatisfactory performance, several courses of action are available. Listed from least to most serious they are:

a. Initial Discussion. The Contracting Officer will normally conduct a discussion with the contractor in an attempt to resolve discrepancies in performance. These discussions are documented for possible later references.

b. Cure Notice. Continued unsatisfactory performance may result in the Contracting Officer issuing a “Cure” notice. This notice itemizes the unsatisfactory performance areas and prescribes a fixed number of days (should not be less than 10 days) within which performance must be corrected.

c. Show Cause Notice. Failure to satisfy a “Cure” notice or lack of 10 days remaining on contract performance may result in a “Show Cause” considered for termination for default (or breach) of contract. Usually the only cause for retraction of this notice is if the contractor positively corrects the problem and/or performance, and can prove steps have been taken to prevent a recurrence. Otherwise, termination will be the next step.

d. Termination for Default (or Breach) of Contract. This is the final step in the contract environment. Once a termination notice is issued there is no turning back. Faulty termination would be not only embarrassing, but would subject the government to possible liability for claims (\$\$) filed by the contractor. Default termination, likewise, has grave consequences for the contractor. The contractor may be liable for all reprocurement costs sustained by the Government (including the difference between the contract price and that of the new/reprocurement contract) and usually sustains damage to his/her reputation and possible debarment from future Government contract awards.

e. The Importance of Timeliness. Fast and accurate reporting is the key to satisfactory contract performance. Report early symptoms of performance to the Contracting Officer immediately, and **FOLLOW-UP IN WRITING!** The Customer Feedback form, located in the DOC Public File Folder, is a means by which a requiring activity can report poor contractor performance.

5-6. TERMINATION OF CONTRACTS FOR THE CONVENIENCE OF THE GOVERNMENT. Most formal contracts and some purchase orders contain a clause under which the Government may terminate at its convenience. (Usually this action occurs when there is no longer a requirement for the items and/or service under contract.) It may also follow when a higher authority adjudicates a termination for default to be improper. Termination for convenience may involve payment of a settlement cost to the contractor to compensate for expenses incurred in anticipation of contract performance.

5-7. CONTRACT CHANGES. Only the Contracting Officer is authorized to effect contract changes. Basically, changes fall into two broad categories: Changes within the scope of the contract and changes outside the scope of the contract. The Contracting Officer generally has final authority for determining which category applies.

a. Changes within the scope of contract are those that affect the work originally specified in the contract. The Contracting Officer is empowered to make such changes upon receipt of proper documentation (see below). The change may be in the form of either a “Change Order” or a “Supplemental Agreement” depending upon circumstances existing at the time.

b. Changes outside the scope of the contract: Directives classify such changes as a “new contract” and require separate contracting action.

c. Documentation required for contract changes. Generally, the same supporting documentation (see paragraph 5-8c) is required for contract changes as for the original contract, except where it is of such insignificance that the change can be readily expanded via use of only a supplemental purchase request

5-8. RECEIVING REPORTS. Those actions requested by the use of a DA Form 3953 (Generally services) require the accomplishment of a Receiving Report by the Recipient of the Services.

Receiving Reports may be accomplished by preparing a DD Form 250 or by checking the appropriate block on the DD Form 1155.

Failure to prepare a receiving report, has many adverse impacts upon the contractual action.

- a. Timely Payment to the contractor is delayed or denied.
- b. Late Payments results in Government Payment of Interest, on contractor’s claims, further limiting valuable resources.
- c. Existing contract records reflect non-performance by the contractor and require additional follow-up effort.

5-9. PROMPT PAYMENT REQUIREMENTS. Federal law requires the Payment of Interest to all contractors who are not paid in a prompt manner. The DFAS LAWTON-FORT SILL OPLOC (VENDOR PAY), ATTN: DFAS-LW-FPV, 4700 MOW WAY ROAD; DEPT 1791, FORT SILL, OK 73503-1791 makes every effort to make timely payments; however, failure to receive properly executed receiving reports often delay such payment. Interest payments made by OPLOC due to late receipt of receiving reports are generally assessed to the activity responsible for the delay. Protect your budget dollars by insuring prompt submission of receiving reports.

## PART 6

### CONTRACT REPAIR PROCEDURES

#### 6-1. GENERAL:

a. Contracting for repairs is one of several functions of the DOC. DOC is governed by the Federal Acquisition Regulation (FAR) and is responsible for processing purchase requests for equipment repair and establishing Preventive Maintenance Agreements (PMAs).

b. We define repair as modifying, modernizing, rebuilding, overhauling or repairing of equipment. Contract Repair WILL NOT repair “Real Installed Property” such as overhead doors, carpet installation, etc. In most cases, repairs to equipment are no longer accomplished in-house. For the most part, equipment is repaired by local contractors.

c. All “Request for Purchase”, DA Form 3953, must be properly completed.

#### 6-2. UNAUTHORIZED ACTS:

a. In accordance with Government regulations (FAR), only the Contracting Officer or his/her designated representative has the authority to enter into a contract on behalf of the Government. Using activities, including property book officers, commanders, and approving officials DO NOT HAVE THE AUTHORITY to commit or obligate the Government, unless specifically authorized by the Contracting Officer in writing.

b. Any individual performing unauthorized contracting acts which result in costs being incurred by contractors may be held liable for such costs. The individual’s commander must state what disciplinary action was taken as a result of the unauthorized action. These individuals, if military, may be subject to disciplinary action under the UCMJ. Each instance of an unauthorized act must be reported to HQ ACA.

c. The seriousness of such actions should not be taken lightly. You must follow prescribed directives in requesting contract repair services and avoid actions that could result in unauthorized or illegal acts. Additionally, individuals involved directly or indirectly in any state of the contracting cycle, will not disclose to any contractor or persons associated with a contractor, any information which would provide undue advantage to private or personal interest. Whenever in trouble, call the DOC.

#### 6-3. EMERGENCY WALK-THROUGH REQUESTS:



a. From time to time, it may become necessary to request emergency processing for equipment repair. Because this procedure requires immediate attention by contracting personnel in various sections of contracting Property Book Officers shall follow the procedures established below to ensure these types of requests are processed in the most expeditious manner.

(1) Prepare a Electronic Purchase Request through PRWeb.

(2) Prepare a letter of emergency justification, setting forth the facts contributing to the emergency, and include a mission impact statement as to why the request should be processed on an emergency basis.

(3) All letters of emergency justification must be signed by the Chief of the Requiring Activity.

(4) Send request through to appropriate offices for signature as applicable, where it will be reviewed for accuracy and completeness. If request is properly completed, and emergency justification is adequate, the Deputy of the Directorate of Contracting will approve the package for processing. Once the request has been approved, the Contract Specialist will proceed with the purchase and the requester will be provided with the information necessary to receive the services and the action required to finalize inspection and acceptance.

#### 6-4. REPAIRS PERFORMED UNDER GSA CONTRACTS:

a. There are certain equipment items that must be repaired by utilizing Government Services Administration Contracts. Certainly, the most common one would be the GSA contract covering typewriters. These GSA contracts are the results of contractors bidding for the right to service a specific area. However, there are times when GSA simply does not award a contract for a specific item. When this occurs the repairs are made by the use of “Open Market” methods by the Acquisition Division.

b. Some of the items that GSA contracts may cover are typewriters, electric motors, office furniture, pool tables, fax machines, etc. But again, sometimes a contract may not exist for certain items that may have been covered before. When processing your DA Form 3953, the purchaser will advise you if a GSA contract will be used.

#### 6-5. PROCEDURES FOR ACCOMPLISHING REPAIRS:

a. Equipment is repaired by qualified contractors utilizing one of several contracting methods. Most repairs are accomplished on an “as required” basis, for which a purchase request is processed for the repair of the item. The Service Division then contacts a qualified contractor for a tear down and quote to repair the item. If the tear down and quote reveals that it is economically feasible to repair the item, a purchase order to make the required repairs will be issued.

b. Other methods used to contract for repairs are Formal Contracts, Annual Preventive Maintenance Agreements (PMAs), Purchase Card Agreements (PCAs), and Intra-Governmental Contracts (i.e., GSA, Blind and Severely Handicapped, and Federal Prison Industries).

c. Under PMAs and PCAs, selected equipment is maintained by a contractor, normally an authorized dealer of the manufacturer, on an annual basis. Each piece of equipment placed under preventive maintenance will be periodically inspected by the contractor's field representative to ensure continued operation of the equipment. Additionally, as required, repairs will be accomplished by the contractor within specific time periods. This type of agreement is restricted to specific types of equipment. If you feel that you have some equipment that would qualify for this type of contract, you are encouraged to contact the DOIM/DPW&L to discuss the feasibility of including your equipment under a Preventative Maintenance Agreement.

ATZC-Staff Agency Office Symbol

MEMORANDUM FOR Director of Contracting, ATTN: ATZC-DOC

SUBJECT: Brand Name Request - (Brand Name)

1. A complete justification as to why this particular brand specified is the only brand which will fulfill your requirements.
2. Normally, component parts of presently owned equipment and, in certain situations, replacement items used when replacing an entire ceiling, walls, floors, etc., in order to maintain decor and satisfactory appearance meets this criteria. However, some component parts or replacement parts do not automatically fall within these two categories (i.e., light bulbs, certain paint colors, etc.). If item is a component part, you must identify the end item and explain why you believe no other brand would be acceptable. Personal convenience is not sufficient justification for a brand name item.
3. In conjunction with the above, the initiator is responsible for ensuring adequate research has been accomplished to determine an acceptable substitute brand is not available.
4. A statement to the effect that the required research has been accomplished. This statement should read as follows, "I certify that all possible research to find a competitive brand has been exhausted with time limits available to meet the assigned priority and no other will suffice".
5. Repetitive purchase of the same brand name requires a new brand name justification with each new purchase request.

(Signature)  
Head of Staff Agency  
Signature Block

ATZC-Staff Agency Office Symbol

MEMORANDUM FOR Directorate of Contracting, ATTN: ATZC-DOC

SUBJECT: Noncompetitive Acquisition Analysis

1. Are the minimum needs of the government stated, and does evidence verify these minimum requirements?
2. Do any other companies offer goods or services similar to the minimum requirements?
3. Were other similar goods or services purchased recently?
4. Has anyone justified why no other source of supply will satisfy the minimum needs of the government?
5. Are the technical data package, specifications, statement of work and purchase description overly restrictive and prohibit competition?
6. Was the acquisition a result of an unsolicited proposal? If so, why can only that contractor perform that service or provide that item?
7. Will the government be injured if a noncompetitive acquisition is not made? Does that contractor perform that service or provide that item?
8. What actions have been taken to prevent noncompetitive acquisition in subsequent acquisitions?

(Signature)  
Head of Staff Agency  
Signature Block